

0081

Incoming 00150025

From: <Diana_Whittington@fws.gov>
To: <dharber@fs.fed.us>, <Gregg_Hudson@blm.gov>, <Jeff_McKenzie@blm.gov>, <leroymead@utah.gov>, <rplayer@fs.fed.us>, <Sue_Burger@blm.gov>, <SWRigby@blm.gov>, <david_waller@blm.gov>, <joehefrich@utah.gov>, <JERRIANNERNSTSEN@utah.gov>, <twlloyd@fs.fed.us>
Date: 11/28/2006 5:42:28 PM
Subject: Conference call regarding golden eagles (Bear Canyon escarpment failures) plus additional information regarding cumulative impacts

Friends,

I would like to place some issues before the Wildlife Buffer Team (and keep others in the loop as well as ask their advice) for discussion and problem-solving. I don't know if we can get everyone on a call this Thursday, December 1st, but the FS is trying to get the Bear Canyon NEPA out the door this week. In a call involving Dale Harber, Joe Helfrich, and Betsy Harmann of the FS today, we scheduled an initial conference call on Bear Canyon for this Thursday, December 1st, at 9 a.m. Mountain Time.

The call in number is: 866-793-9284 The passcode is 185995, and I believe it is followed by a # sign, but direction is provided once you get in.

We can try for additional calls either the weeks of December 11 or 18, or we may be able to schedule something for when I arrive in the DC area (I don't want to *completely* abandon you, or give this to Betsy without assistance). While the subject of Thursday's call is only Bear Canyon, there are other issues regarding impacts to golden eagles which I want to pass along. I am requesting the assistance of the Wildlife Buffer Team to develop recommendations to the Coal Interagency Team for how to resolve some of the issues; resolution will require the participation and coordination of numerous agencies. I'll try to outline the various factors, but there are mine-specific issues (Bear Canyon), and cumulative issues (other mines and road kills) within which the specific issues need to be placed. I've made a few recommendations, the most important of which I've noted with an asterisk.

1. Bear Canyon: I am awaiting additional data, so can not be as specific as I would like, but I will try to present the pertinent items as I have them. I will also provide additional information and maps by the end of tomorrow. If anyone can bring additional data or information to the call, I would appreciate it. I understand that the mining proposal for the Bear Canyon mine is estimating escarpment failure over approximately 2+ miles of cliffs which currently contain 6 golden eagle nests. In addition, since there may be up to 3 coal seams which are mined, there is the potential for subsequent escarpment failure in the same location after a period of a year or two (during which time the eagles may have rebuilt on any new ledges). I have asked Dale Harber and the FS to provide an estimate of the time period over which the escarpment failure(s) will take place, because that will help us develop appropriate mitigation, if mitigation is feasible. In the past, when escarpment failure has been predicted on a small area, threatening one nest, at one specific point in time, and there were no other options, we have supported as mitigation the temporary screening of a golden eagle nest to prevent occupancy during the breeding season in which escarpment failure was predicted. This was to prevent the mortality of eagles using the nest, and when there were alternate nests in areas where

escarpment failure would not occur. From what I understand of the Bear Canyon proposal, it goes far beyond previous actions. There appears to be a significant stretch of escarpment with multiple nests which may be lost over a period of time (perhaps several years). We have no guarantees escarpment failure will occur outside the breeding season; screening nests each year over a period of years is not an option I would propose or support; and even if we screened nests, I see is no practicable way, over this temporal and spatial scale, to ensure the birds will not nest on top of the screens or nest on an unscreened ledge. In a nutshell, not only is the project as outlined to me proposing to take up to 6 existing golden eagle nests, it may result in take of nests rebuilt after the initial failure, and it is also proposing actions which risk mortality to golden eagles. We may have a bit of time to develop the mitigation measures, because it's possible the FS can permit the commencement of mining as long as mining which would mean escarpment failure under golden eagle nests is not allowed without an appropriate mitigation plan (I would support that). However, we should initiate the process of developing mitigation measures ASAP. Otherwise, this process is going to be a continuing saga of crisis management, one nest at a time.

* We need *much* more information and explicit details (what percentage of the identified nests in the area are going to be affected by this proposal; how many territories may be involved, etc.), but we need to start discussing this. And, we have a need for new mitigation options to help us reduce the potential for mortality. Wildlife Buffer Team members, please make yourself available for the conference call this Thursday morning. Sorry for such late notice but I just found out yesterday about the NEPA deadline.

* I am hereby requesting the assistance of migratory bird experts in the USFWS Regional and/or Washington Office (or anyone you can recommend with expertise) to help us with potential mitigation options.

* As I currently understand the proposal, barring significant additional mitigation and conservation measures, I will be advising the Utah ES Office to recommend the proposal include a mining alternative which will not result in such extensive escarpment failure.

* You will have to start coordinating ASAP with our Regional Migratory Bird Permits Office (I provided you with information in my previous e-mail). I don't want this particular recommendation to be interpreted in any way to imply permits for take of multiple nests in one area will be granted: that is not my decision. It's just if you want to apply, you need to get the process started because I believe it will be lengthy. While the mine company can be the requestor, I don't think they have the expertise or information. Since it is the BLM, OSM, and Utah Division of Oil, Gas, and Mining (UDOGM) permitting authorities which are involved, I recommend you jointly coordinate with the Utah Division of Wildlife Resources (UDWR) to engage in the process. I imagine our local ES office will continue to assist, but that's a decision for the supervisors.

The following items outline some of the cumulative impacts to golden eagles related to the coal program which should be addressed in the long term. While I don't recommend discussing them on Thursday, our discussions on Bear Canyon should be placed within the context of these cumulative issues.

2. This section is limited to permits for take of golden eagle nest(s). It is not applicable to potential mortality of an eagle; you don't want to go there. As I mentioned in my previous e-mail, the permits office will require information regarding the local golden eagle population so they can evaluate the potential impact of permitting take of a nest. I also mentioned that the program needs to evaluate how many mines are proposing action which may result in the take of golden eagle nests (or, as in the case of the Lila Canyon Mine, the potential abandonment of 3 nests).

* I recommend the Team evaluate which areas currently containing minable coal in the Upper Price River watershed to determine: the presence of currently known golden eagle nests; the presence of escarpments which may provide suitable nest substrates; and the general areas where mining may result in escarpment failure. This will provide a general idea of the scope of the issue. If there will be a continuing problem involving other mines, the Wildlife Buffer Team should see if additional conservation or mitigation measures can be developed. The mines should be consulted in the development of measures. They may provide some innovative alternatives.

3. Continuing road kills of golden eagles. I think we need to place the issue of one mine's proposal to take multiple nests squarely within the cumulative context of the ongoing, unresolved issue of mortality to golden eagles which are scavenging on road kills along routes heavily used by coal haul trucks. According to information accumulated by UDWR in Price, the documented mortality or injury of golden eagles in the coal haul area, from 2004-2006 (3 seasons), has been 19 golden eagles. While I realize not all these incidents are directly a result of collision with coal haul trucks, the coal haul traffic does contribute significantly to the presence of road kill which draws eagles to scavenge. In addition, given the illicit market in golden eagle feathers and parts, and the activities of predators, it's reasonable to assume the documented incidents are only a minor portion of the actual incidents.

This has been a continuing problem for a number of years. Larry Dalton, who is now with the State Office of UDWR worked this issue extensively when he was in Price, as did Laura Romin of our office. At one time, to help raise awareness and try to reduce mortality, the Utah Department of Transportation (UDOT) had placed signs on the interstate providing notice of the presence of eagles. They are currently being phased out.

In the spring of 2004, staff from UDOGM met with Tony Wright, sensitive species biologist from the Price UDWR, John Neal who was our lead USFWS Law Enforcement Officer here in Utah, and myself, to discuss the issue of the continuing road kills. Tony developed some proposals for minimizing the risk of mortality, including a draft brochure/handout to be given to the coal haul drivers and mines as part of an educational program. Unfortunately, he was unable to secure funding or other support for the brochure (attached below).

One of the other measures we discussed is a coordinated reporting/removal effort for the road kill along the most heavily used routes. I was asking the operators to report road kill to those with authority to remove the carcasses. I thought it was a reasonable approach. This is Tony's report-back on his progress:

As far as removing roadkills, the best I could do was to

get pulling
carcasses back from the road in problem areas approved as
a dedicated
hunter project. If we can identify people in the
industry who drive
these roads often and are hunters, they can get 1 hr.
credit for each
deer pulled off the right of way. I will work with the
operators on
this and see if we can identify the right people.

I don't know the current status of the effort, but would hazard a guess it hasn't had a lot of takers. One of the biggest hurdles to all mitigation ideas has been the inability of UDOGM to place requirements in their mine permits for actions taking place outside the physical boundaries of the mine permit, and that limitation includes the hauling of the coal off-permit.

* I recommend the Wildlife Buffer Team revisit Tony's brochure to see if it contains all the need information (the language regarding bald eagles will need to be modified), then send the final brochure to the Coal Interagency Team with a recommendation they endorse its adoption and use.

* Financial support for publication of the brochure should be sought.

* In addition, I recommend an interagency educational effort which also includes UDOT.

* BLM and OSM permitting (does the FS have any authority here?) should include required measures for minimizing the risk of road kill of golden eagles. Although the UDOGM authority may not go beyond the boundaries of the permit, under NEPA, the transportation of the coal is a connected action, and the road kill should be addressed and mitigated by the federal agencies. Remember, the prohibition of take under the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act (the relevant statutes here) is not limited to the actions of federal agencies. However, it appears in this case it's only the federal agencies which have the authority to institute protective permit requirements.

(See attached file: EAGLEBrochure.DOC)

Again, please join us on Thursday at 9 am, so we can begin to discuss Bear Canyon. And thank you, Dale, for this wonderful 'going away present'.

Best regards,

Diana M. Whittington
USFWS, Ecological Services
2369 West Orton Circle
West Valley City, UT 84119
ph: 801/975-3330 x 128
fx: 801/975-3331

CC: <Betsy_Herrmann@fws.gov>, <Janell_Suazo@fws.gov>, <Eric_Schultz@fws.gov>, "Pam Grubaugh-Littig" <PAMGRUBAUGHLITTIG@utah.gov>, <Steve_C_Madsen@blm.gov>, <jimparrish@utah.gov>, <tonywright@utah.gov>, <rsingh@osmre.gov>, <HAUSTIN@OSMRE.GOV>, <James_Kohler@blm.gov>, <George_T_Allen@fws.gov>, <pwest@utah.gov>, <Joseph_Burns@fws.gov>, <John_Cornely@fws.gov>, <Larry_Crist@fws.gov>, <Connie_YoungD@fws.gov>, <nathansill@utah.gov>, <ccolt@fs.fed.us>, <Laura_Romin@fws.gov>, <Lucy_Jordan@fws.gov>, <Paul_Abate@fws.gov>, <bhamann@fs.fed.us>, <frankhowe@utah.gov>, <jimparrish@utah.gov>, <Albert_Manville@fws.gov>

Eagles and Energy Industry Transportation in Carbon and Emery Counties



Purpose- This pamphlet describes eagles and informs energy industry workers on ways to avoid harming eagles while performing their jobs.

Eagles and Road Kills- The Utah Division of Wildlife receives most reports of killed or injured eagles on roads during winter months when deer and elk are concentrated on low-elevation winter ranges. Eagles are usually struck while they are feeding on road-killed carrion.



Description and Habits- Eagles are what biologists refer to as k-selected species. This means they do not mature quickly and produce few young in their lifetime. Thus, unlike gamebirds, the survival of each individual is important to the population.

Golden Eagles are large, dark birds with a wingspan of 6 ½ feet and a weight of about 10 lbs. The head is relatively small and the back of the neck is golden in the adult. Immature golden eagles have patches of white in the wings and their tail is white with a broad dark band at the outer edge. Typically this eagle is found in open country, especially in mountainous regions. It feeds mainly on small mammals, especially rabbits, marmots, and ground squirrels, but it also eats insects, snakes, birds, juvenile ungulates, and carrion. Rarely, this bird attacks large, healthy mammals. Nests are constructed on cliffs

or in large trees. Pairs are monogamous and often nest in the same territory year after year. Eggs are laid from late February to late March in Utah. Most often two eggs are laid, but clutches may contain 1 to 4 eggs. The eggs are incubated mostly by the female and hatch after 43 to 45 days. Young can fly after 60 to 77 days and are cared for by the parents for at least 30 days after fledging. Birds first breed at an age of 4 or 5 years.

The **Bald Eagle** is listed as a threatened species by the U. S. Fish and Wildlife Service in the contiguous 48 states.

The same size as the golden eagle, the adult bald eagle has a distinctive, contrasting white head and tail. Immatures have extensive mottled white on dark bodies and wings.



Carbon and Emery Co.'s are among the

few locations in Utah where bald eagles have nested in recent years. Nests are almost always in tall trees and commonly near bodies of water where fish and waterfowl prey are available. Nests are constructed of sticks and are very large. Usually two eggs are laid, but typically only the larger hatchling survives to the fledgling stage. Young first fly after ten to twelve weeks, but may remain around the nest for several weeks after fledging. Generally these birds do not breed until they are five or six years old. The number of bald eagles in Utah increases during winter as birds from farther north move south often feeding on carrion of big game, rabbits, and livestock.

Legal Status- In addition to protection for the bald eagle under the Endangered Species Act. The Bald and Golden Eagle Protection Act provides for the protection of eagles by prohibiting the take, possession, sale, or purchase, of any bald or golden eagle. "Take" includes pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest, or disturb. Civil penalties for violating provisions of the Act are a maximum fine of \$5,000 or one year of imprisonment. Felony penalties may also be imposed.

How You Can Help- If you commute to work between sunset and sunrise observe the speed limit and always be alert for animals crossing the road. Deer travel in groups, if you see one cross the road, slow down and be prepared for another to dart in front of you. Put on your flashers momentarily to alert other drivers that you have seen a hazard. Take note of the

areas where you frequently see deer crossing and be especially cautious in those areas. If you see a carcass on the road, slow down and beware of eagles landing or taking off from out of your field of view. If you are a trucker, you do not have the ability to slow down and maneuver like smaller vehicles. Therefore, observing the speed limit and being alert for hazards are your best hope for avoiding hitting big game or eagles.

When roadkills in rural areas are 30 yards or more away from road, the risk of injury or death to eagles by passing vehicles is much reduced. The policy of the law enforcement section of the Southeastern Region of the DWR permits private citizens to move carcasses away from the roadway as long as 1) no portion of the animal is removed, and 2) the DWR is notified by telephone within 24 hours.

Utah Division of Wildlife Resources
Southeastern Region
475 West Price River Drive, Suite C Price,
Utah 84501 (435) 636-0260



STATE OF UTAH
NATURAL RESOURCES
Division of Wildlife Resources